

**FREEDOM OF INFORMATION COMMISSION STATEMENT IN OPPOSITION
TO RAISED BILL 387, AN ACT CONCERNING THE NONDISCLOSURE OF
CERTAIN PERSONNEL OR MEDICAL FILE INFORMATION OF A PROBATION
OFFICER TO A PERSON WHO IS UNDER PROBATION SUPERVISION.**

March 12, 2014

The Freedom of Information Commission (FOIC) submits this statement in opposition to Raised Bill 387 concerning the personnel records of probation officers.

The bill would provide a blanket prohibition on the disclosure of "personnel or medical file or similar files" including discrimination complaints and security investigations concerning probation officers (both current and former) to individuals under the supervision of the Court Support Services Division or certain individuals committed to the custody or supervision of the Commissioner of Correction.

The proposal is unnecessary because there is already an exemption contained in the Freedom of Information Act that can be utilized to withhold these kinds of records under appropriate circumstances. Section 1-210(b)(2) provides for the non-disclosure of personnel, medical or similar files that, if disclosed, would constitute an invasion of personal privacy. The Supreme Court has provided in Perkins v. FOI Commission, 228 Conn. 158, 175 (1993), the standard to determine what constitutes an invasion of personal privacy. Specifically, under the Perkins test, in determining whether disclosure would constitute an invasion of personal privacy, the claimant must establish both of two elements: first, that the information sought does not pertain to legitimate matters of public concern, and second, that disclosure of such information is highly offensive to a reasonable person.

The explicit language of the statute coupled with the time-tested standard set forth by the Supreme Court, already establishes a comprehensive, objective and effective method by which to protect information relating to public sector employees.

Notably, although the Commission believes that this proposal is unnecessary, a similar bill (HB 5125)¹ was recently voted out of the Government Administration and Elections Committee with substitute language that is agreeable to the Commission. Specifically, the substitute language provides that:

Any personal information of a current or former probation officer employed by the Judicial Branch that is not related to the performance of such officer's duties or employment, including, but not limited to, such officer's date of birth; Social Security number; current and former electronic mail address, telephone number and residential address; photographs; and driver's license information; shall not be subject to disclosure under the Freedom of Information Act, as defined in section

¹ See HB 5125, An Act Limiting Access to Certain Information Regarding Probation Officers under the Freedom of Information A ct.

1-200 of the general statutes, to any individual under the supervision of the Court Support Services Division or any individual committed to the custody or supervision of the Commissioner of Correction for a violation of section 53a-32 of the general statutes.

The substitute language purposefully narrows the application of the proposal to personal information and not to information relating to the performance of a probation officer's duties or employment. Hiring decisions, investigations and disciplinary matters, commendations, timesheets – all are public records whose accessibility to the public helps ensure accountability of all public employees – including probation officers.

For these reasons, the FOIC urges rejection of Raised Bill 387, as written, and recommends the adoption of the substitute language referenced above.

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